

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-540

May 31, 2000

PREFERRED CARRIER SERVICES, INC.
Petition for Finding of Public
Convenience and Necessity to
Provide local
Exchange Telecommunication Services

ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL EXCHANGE
SERVICE AS A RESELLER AND
APPROVING SCHEDULE OF RATES
AND TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Preferred Carrier Services, Inc. ("Preferred") the authority to provide competitive local exchange service as a reseller in the State of Maine and approves the Company's Terms and Conditions and Rate Schedules. We also exempt Preferred from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On September 23, 1996, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Preferred filed a petition with the Commission requesting authority to provide local exchange telephone service in Maine. On August 17, 1999 Preferred filed a completely revised application. Preferred previously obtained authority from the Commission to provide interexchange service in Docket No. 96-195.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements

necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Preferred the authority to provide local exchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Preferred's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine. In addition, we have previously found that Preferred is qualified to provide interexchange service.

II. SERVICE TERRITORY

Preferred has requested authority to provide local exchange service throughout the state. It states that it will offer service only as a reseller of local exchange service provided by other authorized local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. Preferred's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

If Preferred wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Preferred's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within six months. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions. With any such application, Preferred shall include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

We allow the terms and conditions proposed by Preferred to go into effect. Preferred has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms, conditions and rate schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Preferred's terms and conditions and the Commission's Rules or a statute, the rule or

statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Preferred's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Preferred to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Preferred's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254" Although the service territory we grant today is statewide and Preferred's terms and conditions do not limit its service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILECs rural exemption is terminated.

On September 16, 1998, in Docket No. 98-633, the Commission approved an agreement between Preferred and Bell Atlantic pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, Preferred must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

If Preferred executes an interconnect agreement(s) with other ILECs(s) it shall obtain approval of those agreements by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, Preferred must comply with the terms of any applicable Commission orders or rules that may govern local

interconnection and compensation for interconnection. Preferred shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Preferred has requested waivers from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708 which govern reorganizations and affiliated interests, and we grant those waivers. Because Preferred's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, Preferred must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.¹ If Preferred resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, Preferred shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

Preferred shall comply with all applicable rules of the Commission and statutes of the State of Maine.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Preferred to provide competitive local exchange telephone service as a reseller in the State of Maine;
2. Exempt Preferred from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and
3. Exempt Preferred from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that Preferred shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Preferred or of any entity that owns more than 50% of Preferred. Preferred shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

of its contact person. Preferred shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Preferred shall amend its rate schedules and terms and conditions to reflect any change in identity.

4. Order that Preferred's proposed terms and conditions and rate schedules, filed on August 18, 1999 (pages 1 – 19 Original), attached to this Order, shall be effective on the date of this Order.

5. Order that Preferred shall comply with all applicable rules of the Commission.

Dated at Augusta, Maine this 31st day of May, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.